

808
No Martiall Law,

BUT

ADVICE

For the Grand Inquests of London,
and Middlesex, and may serve generally
for the whole Kingdome.

Written by a London Apprentice, on the
behalfe of his fellow Apprentices,

1648.

Whittington, John



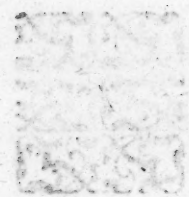
Printed in the Yeare, 1648.

ADVICE

For the Great Indemnity of London,
and the other and may be generally
for the whole Kingdom.

Printed by J. Smith, at the
Office of the London Assurance, on the

16th 1788.



Printed in the Year, 1788.

No martial Law, &c.

Gentlemen,



Ifc and Liberty are the favorites of Law, of these the King cannot (without breach of his Oath) deprive the meanest Subject but by legall proceeding, which onely distinguish the lawfully executed Malefactor from the untimely murdered

innocent.

So tender is the Law over every mans life, so strict in preservation of her owne rules, that if the Sheriffe beheads him whom the Law condemned to bee hanged, tis murder in the Sheriffe, for the Sheriffe not persuing the judgement and warrant of the Law, doth contrary to the Law, and thereby murders him whom he should have executed: And surely that Law that is so tender over those, her owne hand markt out for death, as not worthy to live is zealous over such as never transgressed her statutes.

Stamf. plea, tit.
felony, fo. 13.

Offences deserving death are many, and many the manners of death, differenced onely by the nature of the offence; yet for all offences, for all deaths there is but one tryall. viz. By Peeres, according to *Mag. Chart.* the Statutes of 5. *Edw.* 3. and 28. *Edw.* 3.

Mag. Chart. is that no man be imprisoned or disceised of his Freehold or Libertys or Customes, or be outlawed, or exiled, or otherwise destroyed, nor wee will not passe upon him nor condemne him, but by lawfull judgement of his Peeres or Law of the Land.

5. *Edw.* 3. *Cap.* 9. is that no man shall be attached, nor forejudged of life or lym, contrary to the great Charter.

28. *Edw.* 3. *cap.* 3. is, no man shall bee imprisoned, nor put to death, without beeing brought to answer by due processe of Law.

These statutes exclude all tryals, but by Peeres, as for

26. H. 8.

Cooke 3 part
of the Instit
tutes fol. 52.

Barons to be tryed by Barons, Commoners by Commoners, which is our jury of twelve men, and Commoners cannot wave their Peeres, to be tryed by Barons, nor Barons theirs to be tryed by Commoners, as was resolved in the Case of my Lord *Dances*. Much lesse may we wave the Common Law tryalls to be tryed by Martiall law, for that were to consent to selfe murder; for Sir *Edw. Cooke* saith, that if a Lieutenant, or any one that hath Commission to execute Martiall law, put any man to death in time of peace, this is murder and against *Mag. Chart.*

4. E. 3.
39. Ed. 3.
42. Ed. 3.
numb. 13. Co.
2. part of the
Institutes. fol.
48. Co. 3. part
of Instit. fol.
52.

Times of peace with the ancient Romans were denoted by the shutting of *Janus* Temple. And with us by opening Westminster hall, the Chancery, the Kings Bench, and Courts of justice: and therefore in the Case of *Thomas Earle of Lancaster*, who was taken in open Rebellion and put to death; in the Case of the Earle of *Arrundell*, *John of Gaunt*, and others; the proceedings were adjudged unlawfull because by Martiall Law in time of peace, when the Chancery, the Kings Bench, and other the Kings Courts were open.

If these though Military men and guilty of Crimes, the Common Law would punish with death, might not be condemned and executed by Martiall law when the Chancery, Kings Bench, and Courts of justice were open; how could wee then in London condemne and execute by Martiall law *Mr. Tompkins* a Gowneman, *Mr. Challoner* a Citizen while the Courts of justice were open, a Parliament sitting at Westminster, a Goale delivery in London & Nay while *Mack Maboon*, and *Mack Quier* (Souldiers) were tryed at Westminster by the Common Law condemned, executed by the Common Law: But the reason is apparent, for these men were charged with Rebellion against the King, a crime that the Common law doth punish with death; *Mr. Tompkins* and *Challoner* charged with what the Common law would justifie, not call a crime; yet because policy (not justice) would that they should dye, therefore the Martiall law must

must hang whom the Common law would not.

And upon the same reason Sir *John Hotham* and his Son, though Parliament men, were (without breach of Priviledge) executed by Martiall law: Whereupon a Cavaleer said wittily, that it was the best peece of bad justice hath beene done since the two houses raigned; for when contrary to law the Houses had justified them in treason for keeping Hull from the King, it was but fit to hang them when they would not bee so honest as to restore Hull to the King: And here give mee leave (though with digression) to observe to you what another observed to me upon their deaths: That as their first act being treason was by colour of Law yet against law justified as legall and they rewarded, so their second fact being lawfull, was by colour of law yet against law, adjudged illegall, and they executed. And that their sufferings might in justice bee referred to their first fact, on the same day the moneth they severally entred Hull, on the same day the moneth they severally dyed: for young *Hotham* outriding his Father first entred Hull, on new yeares day, 1641. But Sir *John Hotham*, whom age and six Wives had detarded, did not enter Hull untill the second of *January*, 1641. and therefore on new yeares day 1644. young *Hotham* was beheaded, and Sir *John Hotham* not untill the second of *January*, *Justus es domine & justa sunt judicia tua*; but to returne. When these men suffered, there was some shadow, some colour for Martiall law: For then there was an opposite army on foot in the land, but now for these two yeares there hath been no Army, no enemy in the Land but the two Houses, and their Army, all Courts of justice at Westminster freely open, yet wee have our fellow Subjects, some murdered, some imprisoned, others distreined, as *Robert Arnoll* of Collonell *Lilbornes* Regiment executed, the fifteenth of *November*, 1647. *William Tompson* taken from the Parliament doore by Lieutenant Generall *Cromwell*, and by him committed to White hall, and after by Martiall law con-

demned to be shot to death. Mr. *Pledwell* in Fleetstreet hath his goods distrained by Martial power, while the Chancery is open, the Kings Bench open; nay while the Parliament sits: that Parliament that condemned the Earle of *Strafford*, for sentencing to death (not executing) by Martiall law, the Lord *Mount Norris* for billeting Souldiers and taking distresses by Martiall law, &c.

But beyond all these, is the Sabboth dayes worke, the ninth of *Aprill*, wherein the Lord Mayor and Commissioners for the Militia of London, out-acts all the illegalities of *Strafford*, all charged by Mr. *Lilborne* on Lieutenant Generall *Cromwell*, for the Lord *Strafford* put none to death, and while Mr. *Cromwell* a Martiall Officer doth but execute Martiall law upon Military men for breach of Military orders; the Lord Mayor a Civill Officer, drawes out Military men, and power to execute a Civill not Military order, these doe not sentence nor distraine, they kill their fellow Subjects; for while the Ordinance doth direct that such as prophane the Lords day should pay five shillings, if above fourtene yeares of age, if under, their friends twelve pence, these shoot and kill without distinction, children of nine or ten years of age, & choose rather to commit murther on the Sabboth then permit children to play at Cat on the Lords day.

A breefe and
perfect relation
of the ans.
of the Earle of
Straff. fol. 11.
12.

Mr St. Johns
Argument.

But to finde whether these proceedings (by military power) be actions of arbitrary, and tyrannicall government; examine, and compare them with the charges against the Lord *Strafford*, where the condemning the Lord *Mount Norris* by Marshall Law, the billeting Souldiers upon Subjects against their will, and executing papar Orders by Marshall Law in time of peace, is adjudged by this present Parliament, a subversion of our fundamentall Lawes, and an introducing of an Arbitrary, and Tyrannicall government; next if ye examine, and compare them with the rule and dictate of our settled and knowen Law (to which all military proceedings are opposite and destructive) and which if ye countenance, nay, if ye withstand not, ye are guilty

guilty of their past Facts, guilty of breaking the Protestation, the Solemn League & Covenant with God to maintaine, and protect the Kings person, his honour and estate, the rights, priviledges, and liberties of the Subject; for all these are in the custody of the Law, and if the Law be not preserved all these are violated, the Law said Mr. *Pym* puts the difference between good and evill. just and unjust, our honours, lives, liberties, and estates are all in the keeping of the Law, without Law all men have a like property to every thing, and every man to nothing, for us therefore to execute, or permit to be executed, this Arbitrary, this Tyrannicall government of Marshall Law, while the Chancery is open, the Kings Bench open, and others, the Courts of justice open; we commit treason, murder, rapine, oppression, perjury, for saith Mr. *Pym*, Arbitrary government comprehends all offences: Treason by subverting the Lawes, suppressing the old, and by force introducing a new government, nay, new Governours, Treason inforcing by Military powers, the Kings person from *Holmby* to *New Market*; Treason in detaining by Military power the Kings Person in prison, and forcing papers or ought else from his Person, much more in assaulting his Person, and surely where his Person is thus indangered, his Crowne is not safe, his Honour nor Estate preserved, when by Martiall Law wee condemne and execute any man that may be tryed by Common Law wee murder him: For although the offence deserves death, yet dying by Martiall Law which is illegall, wee murder him whom the Law would have hanged.

Mr. Pym
speech against
the Lord Straff.

Mr. Pym
speech against
the Lord Straff.

Mr. St John
Argument of
Law against
Lord Straff.

All free-quarter is Martiall oppression, all plunder, all distresse by Souldiers, rapine and theft; all these against *Magna Charta*, against our Petition of Right, against our Protestation, against our selemne League and Covenant; because against our Rights and Previledges.

You Gentlemen, are the eyes the eares, the tongues of the County to search out, to heare and to informe the Courts of Justice of these Treasons, these Murders, these Rapines, these Thefts and Oppressions; if yee (Gentlemen) be silent

lent in these Crimes, yee make your selves not onely guilty of the past facts, but of the like in the future, for the impunity of the first invites the second offence, which hath so multiplied these sins upon our Nation that custome hath almost made them lawfull: Let therefore your inquiry be speedy and strict, not pitying the poore, be he Common Souldier or Apprentice, nor sparing the rich, be they the great Officers of the Army or Major or the Committee of Militia of the City, (who deserve chiefly to be indited and executed for the late tumult) yours is onely the cognizance and presentment of crimes, that done *ye saved your owne soules*; the resolution and judgement of Law is the duty of the bench, which if the Judges neglect, *sin is at their doore*, Mercy is the Kings, and lodge onely in his bosome, and if any Rebel sons follow *Ahitaphels* advice and defile their Fathers Concubine, may they want what they pretend to give mercy, and in their flight meete with *Absalons* Oake, and *Joabs* gentle dealing, while yee as faithfull servants to your *David* returne to your owne houses, and sit under your owne Vines and your owne Fig-trees.

Per me *John Whittington*,
neere Dowgate.

FINIS.

